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QUESTION OF VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Bulgaria*, Canada, Cyprus*, Czech Republic, Denmark, Finland*, France, Germany, Greece*, Hungary*, Italy, Latvia*, Liechtenstein*, Lithuania*, Luxembourg, Netherlands*, Romania*, Slovenia*, Switzerland*, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution

1998/... Situation of human rights in Bosnia and Herzegovina, Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)

The Commission on Human Rights,

Recalling all relevant resolutions on this subject, in particular its own resolution 1997/57, of 15 April 1997,

Expressing its full support for the General Framework for Peace in Bosnia and Herzegovina (the "Framework Agreement") and the annexes thereto (together, the "Peace Agreement") which, inter alia, committed the parties in Bosnia and Herzegovina to respect fully human rights, and for the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Reaffirming the territorial integrity of all States in the region, within their internationally recognized borders,

Taking note of the reports of the former Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) - the FRY - together, the countries of the mandate,

Expressing its appreciation for the ongoing important work of the Office of the High Commissioner for Human Rights and its field operation in the region,

I

Introduction

1. Stresses the crucial role that human rights questions have to play in the success of the Peace Agreement and underlines the obligations of the parties under the Framework Agreement to secure for all persons within their jurisdiction the highest level of international norms and standards of human rights and fundamental freedoms;

2. Stresses the need to focus international human rights efforts in the region on the core problems of:

(a) Lack of full respect for the human rights of all individuals, without any distinction;

(b) Return of refugees and displaced persons in safety and in dignity;

(c) Capacity-building in the areas of rule of law and administration of justice;

(d) Lack of respect for the freedom and independence of the media;

(e) Inadequate cooperation with the International Criminal Tribunal for the Former Yugoslavia (the Tribunal);

(f) Missing persons;

3. Appeals to the international community to support such efforts and insists that the parties act to promote and protect democratic institutions of government, the rule of law and effective administration of justice at all levels in their respective countries, to further ensure freedom of expression and of the media, to allow and encourage freedom of association, including with respect to political parties, and to ensure freedom of movement and to foster a culture of respect for human rights;

II

Bosnia and Herzegovina

4. Welcomes progress in some areas towards implementation of the Peace Agreement and towards the improvement in respect for human rights as demonstrated by the important work of the Office of the Federation Ombudsmen, some positive developments in the Republika Srpska since the formation of the new government, the voluntary surrender of persons indicted by the Tribunal, improvement in freedom of movement in some areas, police restructuring in the Bosnian Federation and parts of the Republika Srpska, increased cooperation with the International Police Task Force and generally full and free access to the territory of Bosnia and Herzegovina for international institutions and organizations, including non-governmental organizations;

5. Also welcomes the work of the Commission on Human Rights for Bosnia and Herzegovina and its two parts, the Office of the Ombudsman and the Human Rights Chamber, and their decisions, and underlines the importance of their intensifying their activities concerning alleged or apparent violations of human rights and alleged or apparent discrimination of any kind;

6. Further welcomes the conclusions of the Peace Implementation Council meetings held in Paris on 14 November 1996, in Sintra, Portugal, on 30 May 1997 and in Bonn on 9 and 10 December 1997;

7. Takes note of the successful holding of countrywide municipal elections on 13 and 14 September 1997 in Bosnia and Herzegovina and of elections for the Republika Srpska Assembly on 22 and 23 November 1997 under the auspices of the Organization for Security and Cooperation in Europe, and calls for full and unconditional implementation of the municipal election results;

8. Emphasizes that the primary responsibility for ensuring the progressive achievement of democratic goals and building a tolerant, multi-ethnic society lies with the people of Bosnia and Herzegovina, in particular through the central Government and the governments of the entities, as well as through, inter alia, religious communities, humanitarian organizations and non-governmental organizations;

9. Reiterates calls in its previous resolutions upon all authorities in Bosnia and Herzegovina concerning:

(a) Bringing legislation into full compliance with the human rights provisions of the Constitution of Bosnia and Herzegovina and implementing this legislation;

(b) Prevention of and accountability for human rights violations;

(c) Full implementation by the authorities of the Republika Srpska and the Federation of existing laws providing amnesty for crimes related to the conflict, other than serious violations of international humanitarian law, and, in the case of the Republika Srpska, the immediate amendment of its law to provide amnesty for persons who avoided conscription or deserted;

(d) Full cooperation with the Commission on Human Rights for Bosnia and Herzegovina and full implementation of its recommendations and decisions, and especially to fulfil their obligations to provide financial support for the Commission's activities;

(e) Putting an end to beatings, unlawful evictions and other forms of harassment, and the prosecution to the full extent of the law before an independent and impartial tribunal of those identified in the report of the International Police Task Force concerning the incidents in Mostar on 10 February 1997;

(f) The establishment without delay in the Republika Srpska of institutions for the protection of human rights, in particular a human rights ombudsman;

10. Calls upon authorities in Bosnia and Herzegovina:

(a) To complete the reform and restructuring of local police forces under the purview of the International Police Task Force as soon as possible and to ensure that local police forces are trained in and fully respect and protect all human rights;

(b) To reverse the effects of "ethnic cleansing", to allow freedom of movement and the return, especially "minority return", of refugees and displaced persons to their places of origin, to fully implement the concept of "Open Cities" to provide security guarantees for returnees, to cease immediately actions that undermine the right to return, to take immediate steps to repeal legislation which infringes on the right to return and to put an end to practices of discrimination based on ethnic and political grounds, and calls for the Federation to implement fully the results of the international conference on the return of displaced persons and refugees to Sarajevo, held in Sarajevo on 3 February 1998;

(c) To bring without delay property and housing legislation at all levels fully into line with the proposals of the High Representative and to fully and speedily implement it once adopted;

(d) To repeal laws relating to "abandoned" property, to end illegal evictions of persons from their homes, to reinstate in their homes persons who have been evicted in violation of their rights, to cooperate with and support the work of the Commission for Real Property Claims to resolve outstanding property claims and to implement fully the decisions of that Commission;

(e) To cooperate fully with the Office of the High Representative and institutions established by the Peace Agreement with a view to strengthening free and independent media, to diversifying the media environment, while reminding broadcast media of their special responsibility to observe and promote international standards of journalism, and developing an appropriate legislative framework for the protection of the editorial independence of the media, in particular those under the control of the authorities;

(f) To ensure the necessary conditions for free and fair elections to be held in 1998 under the supervision of the Organization for Security and Cooperation in Europe, and to comply with arbitration decisions regarding recent municipal elections;

(g) To cooperate closely with the International Supervisor for Brcko, and to work towards meeting the conditions of tolerance and pluralism as stressed by the Presiding Arbitrator in his decision of 15 March 1998;

(h) To work towards reform of criminal law in both entities;

11. Reiterates its calls in its resolution 1997/57 upon the international community concerning supporting all aspects of the work of the International Police Task Force, the return in safety of persons who have left the territory of Bosnia and Herzegovina and full support, including through voluntary contributions, for the Constitutional Court;

III

Republic of Croatia

12. Welcomes the successful completion of the mandate of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, the accession by the Republic of Croatia to the Council of Europe, the ratification of the European Convention on Human Rights and other relevant human rights instruments by the Government of the Republic of Croatia, and its cooperation with the Special Rapporteur;

13. Also welcomes technical cooperation and assistance programmes planned by the Office of the High Commissioner for Human Rights in consultation with the Government of Croatia, and calls upon the High

Commissioner to initiate, at the earliest possible opportunity, projects emphasizing human rights training for professionals involved in law enforcement and the rule of law, as well as human rights education;

14. Calls upon the Government of the Republic of Croatia to undertake greater efforts to adhere to democratic principles and to continue its efforts to attain the highest level of compliance with international norms and standards of human rights and fundamental freedoms and:

(a) To accelerate the implementation of its Programme for Confidence-Building and the normalization of life in the war-affected regions of Croatia, thereby facilitating the expeditious return, in safety and in dignity, of all refugees and displaced persons to their homes in all regions, in particular to the Krajina, to cooperate with the United Nations High Commissioner for Refugees to that end, and to use all available means to secure their safety and to allow continued access to this population by humanitarian organizations;

(b) To respect the human rights, including the property rights, of all, including in particular returning displaced persons and refugees, including ethnic Serbs now present in the Republika Srpska or the FRY, their right to remain, leave or return in safety and dignity, and to enable the restoration of the multi-ethnic character of Eastern Slavonia, Baranja, Western Sirmium and other parts of the Republic of Croatia;

(c) To put an end to harassment of displaced Serbs, looting and physical attacks against Croatian Serbs and to encourage them to stay within the Republic of Croatia and, in particular, to put an end to the involvement by Croatian military and police officials in such incidents, and to investigate and arrest speedily those responsible for committing or instigating acts of violence and intimidation aimed at driving people away;

(d) To guarantee freedom of association and of the press, including taking concrete steps to establish editorially independent State electronic media and full access by the opposition to State channels and, in particular, to cease harassment of free and independent media;

(e) To extend full cooperation to the international organizations operating in the Republic of Croatia, in particular the Organization for Security and Cooperation in Europe and the United Nations Police Support Group remaining in Eastern Slavonia, Baranja and Western Sirmium, and to heed the advice of the Organization for Security and Cooperation in Europe in matters pertaining to its mandate;

(f) To respect the right of non-governmental organizations to operate without restrictions;

(g) To pursue, within the context of obligations undertaken to the Council of Europe, the equal application of the law to all citizens, irrespective of ethnicity, religion, or political affiliation, to ensure the swift and complete implementation of judicial decisions, and to implement the European Convention on Human Rights in all governmental practices;

(h) To continue fulfilling the rights and guarantees pledged in its letter of 13 January 1997 (S/1997/27), inter alia the pledge to guarantee representation of Serbs at various levels of local, regional and national government, and to this end to fulfil its obligations to issue citizenship, identity and relevant technical documents to all persons so entitled under Croatian law;

(i) To implement the Amnesty Law enacted on 25 September 1996 fully and fairly;

(j) To continue to cooperate with the Special Rapporteur and to comply with all his recommendations and to cooperate with the Croatian ombudsman;

15. Calls upon the international community:

(a) To support the United Nations Civilian Police remaining in the field in 1998 and also to support the involvement of the High Commissioner in human rights monitoring in the region of Eastern Slavonia, in close cooperation with other international organizations and in close consultation with the Government of Croatia;

(b) To provide for a continued international presence, as recommended by the Special Rapporteur, through support of initiatives advanced by the High Commissioner for Human Rights, the Organization for Security and Cooperation in Europe, the Council of Europe, the European Community Monitoring Mission and other international organizations, including the programme of technical cooperation envisioned by the Office of the High Commissioner for Human Rights;

IV

Federal Republic of Yugoslavia (Serbia and Montenegro) - the FRY

16. Welcomes cooperation by the FRY with the former Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), Ms. Elisabeth Rehn;

17. Also welcomes the recent visit by the new Special Rapporteur, Mr. Jiri Dienstbier, to the FRY;

18. Further welcomes the deployment of additional human rights officers in Kosovo;

19. Endorses the recommendations of the Special Rapporteur as contained in his report on his visit to the FRY, including Kosovo, in particular that:

(a) The FRY should permit forensic investigation by independent experts concerning the 28 February operations in Likosani and Cirez and the 5 March operations in Prekaz, and should also conduct its own investigation of these events;

(b) That the Kosovo Albanian leadership should commit itself to ensure that the Kosovo Albanian community shall pursue their goals only by peaceful means;

(c) That all parties should allow free access for international and humanitarian organizations and the establishment of a temporarily expanded office of the High Commissioner for Human Rights operating out of the permanent premises to be established in Kosovo;

20. Regrets that the FRY has complied only partially with the recommendations of the Chairman in Office of the Organization for Security and Cooperation in Europe regarding fostering democracy and the rule of law;

21. Also regrets the express refusal of the FRY to allow a visit by the Special Rapporteur on extrajudicial, summary or arbitrary executions;

22. Calls upon authorities in the FRY:

(a) To comply with the recommendations contained in the reports of the Special Rapporteur;

(b) To comply also with its obligation to cooperate with the Tribunal;

(c) To undertake substantially greater efforts to strengthen and implement fully democratic norms, especially in regard to respect for the principle of free and fair elections, the rule of law, and full respect for human rights and fundamental freedoms, and to improve its performance in the area of the administration of justice;

(d) To protect and expand opportunities for free and independent media, institute non-partisan management of the State-owned media and cease efforts to restrict press and broadcast journalism;

(e) To put an end to torture and ill-treatment of persons in detention as described in the reports of the Special Rapporteur, and to bring those responsible to justice;

(f) To repeal the 1989 Law on Special Conditions for Real Property Transactions and to apply all other legislation without discrimination;

(g) To respect the rights of persons belonging to minority groups, especially in Sandjak and Vojvodina, and of persons belonging to the Bulgarian and Croatian minorities;

23. Condemns violent repression of non-violent expression of political views in Kosovo, in particular the brutal police actions as well as the excessive use of force against the civilian population, including demonstrators and journalists among the Albanian population, condemns as well the killing of innocent civilians, equally condemns terrorism in all its forms and from any quarter, and underscores the grave concern of Member States regarding the increasingly serious situation there;

24. Urges all parties in the FRY to act with the utmost restraint and with full respect for human rights, and to refrain from acts of violence;

25. Insists that the Government of the FRY:

(a) Take immediate action, in view of the deteriorating situation in Kosovo and the danger of escalating violence there, to put an end to the continuing repression of and prevent violence against the ethnic Albanian population, as well as other communities living in Kosovo, including acts of harassment, beatings, brutality, torture, warrantless searches, arbitrary detention, unfair trials and arbitrary, unjustified evictions and dismissals;

(b) Ensure the complete withdrawal of its special police from Kosovo;

(c) Release all political detainees, allow the return in safety and dignity of ethnic Albanian refugees to Kosovo and respect fully all human rights and fundamental freedoms, including freedom of the press, freedom of movement and freedom from discrimination in the field of education and information and, in particular, improve the situation of ethnic Albanian women and children;

(d) Allow the establishment of democratic institutions in Kosovo;

(e) Agree to the establishment of an office of the High Commissioner for Human Rights in Pristina;

(f) Broaden cooperation with other regional and international actors, including by allowing the return of the long-term missions of the Organization

for Security and Cooperation in Europe, visits by the personal representative of the Chairman in Office of the Organization for Security and Cooperation in Europe and the establishment of a European Union presence in Kosovo;

(g) Implement the September 1996 memorandum of understanding on education in Kosovo immediately and without conditions, including at the university level, as an important first step towards reducing regional tensions, while welcoming efforts made in that regard;

26. Emphasizes the importance of a substantive, unconditional dialogue between authorities in Belgrade and the Kosovo Albanian leadership aimed at achieving a lasting resolution to the problems of Kosovo consistent with the territorial integrity of the FRY, and notes the proposals made by the Government of the FRY in that direction;

27. Also emphasizes that improvements in the promotion and protection of human rights and political freedoms in Kosovo and the rest of its territory as well as cooperation with the Tribunal will assist the FRY to improve relations with the international community;

28. Welcomes positive developments in Montenegro, including in the areas of freedom of the media and the treatment of ethnic minorities, and also welcomes the formation of a multi-ethnic coalition government;

29. Calls upon the international community:

(a) To establish appropriate safeguards to ensure the security and fair treatment upon return of those who sought temporary protection and asylum, including appropriate measures by Governments, such as legal guarantees and follow-up mechanisms, to allow those persons to return to their homes in the FRY in safety and dignity;

(b) To continue to support existing national democratic forces and non-governmental organizations in their efforts to build a civil society and achieve multi-party democracy in the FRY;

V

International Criminal Tribunal for the Former Yugoslavia

30. Calls upon all States and, in particular, all parties to the Peace Agreement, especially the Government of the FRY, to meet their obligations to cooperate fully with the Tribunal, noting that there is no valid constitutional or statutory reason for failure to cooperate, and urges all States and the Secretary-General to support the Tribunal to the fullest extent possible, in particular by helping to ensure that persons indicted by the

Tribunal stand trial before it and, as a matter of urgency, by continuing to make available to the Tribunal adequate resources to aid in the fulfilment of its mandate, including through the provision of legal and technical expertise;

31. Welcomes the decision by the Prime Minister of the Republika Srpska to allow the Tribunal to open an office in Banja Luka and urges the government of the Republika Srpska to follow through on promises to improve cooperation with the Tribunal;

32. Also welcomes in this context the decision by four persons indicted by the Tribunal who are residents of the Republika Srpska to surrender voluntarily to the custody of the Tribunal as required by the Peace Agreement, and calls upon all indicted persons to do likewise;

33. Calls upon authorities in the FRY to comply with their obligation to cooperate with the Tribunal, including with regard to events in Kosovo, on the basis of Security Council resolution 1160 (1998), and strongly recommends that the Office of the Prosecutor of the Tribunal begin gathering information relating to the violence in Kosovo that may fall within its jurisdiction;

34. Notes that the authorities of Bosnia and Herzegovina have in general respected the "rules of the road" agreed in Rome on 18 February 1996 by arresting or detaining only those war crimes suspects sought by the Tribunal, by submitting all cases involving suspected war crimes to the Tribunal for review prior to prosecution by national courts and by facilitating access to detainees by the Tribunal and other monitors and representatives of non-governmental organizations, and urges all parties to the Peace Agreement to do the same, including through submission of cases to the Prosecutor of the Tribunal under the "rules of the road";

35. Urgently calls once again upon competent authorities in Bosnia and Herzegovina, including those of the Federation and in particular in the Republika Srpska, and the Governments of the Republic of Croatia and the FRY to apprehend and surrender for prosecution, as required by Security Council resolution 827 (1993) and the statement by the President of the Security Council on 8 May 1996, all persons indicted by the Tribunal and notes that the large majority of those indicted, including Radovan Karadzic and Ratko Mladic, appear to be living in the Republika Srpska or the FRY;

36. Calls upon the international community to give the Tribunal every appropriate help to bring into custody suspects indicted by it;

VI

Missing persons

37. Calls upon all parties to treat the subject of missing persons as an urgent humanitarian problem, to make full disclosure of available information to the Working Group on Missing Persons Chaired by the International Committee of the Red Cross, and to abandon the principle of reciprocity in dealing with this question;

38. Endorses in this regard the recent efforts of the International Commission on Missing Persons in the Former Yugoslavia and requests that the International Commission continue and intensify its efforts to provide essential supplies for the Bosnian exhumation process, to provide resources and organizational support for families and family associations of the missing in the region, to support the forensic efforts of non-governmental organizations and bring the concerns of families to the attention of the political leadership of all three countries;

39. Commends the International Commission for securing the release in August 1997 of 16 prisoners of war held by the Republic of Croatia and for obtaining from the FRY all 1,200 Vukovar death protocols for the Republic of Croatia;

40. Also commends Serb, Croat and Bosniac leaders for restarting the joint exhumation process chaired by the Office of the High Representative;

41. Specifically calls upon the parties:

(a) To immediately release any individuals held as a result of, or in relation to any conflict between or among them (so-called "hidden detainees"), to provide information on specific lists of detainees unaccounted for and presented to the relevant authorities by the International Committee of the Red Cross, and to allow unannounced visits to actual or alleged places of detention in order to investigate allegations transmitted to international actors by families of the missing;

(b) To resume and expand the joint exhumation process in Bosnia and Herzegovina under the auspices of the Office of the High Representative as soon as possible, and to refrain from compromising mass grave sites or destroying forensic evidence;

(c) To comply with their obligations to investigate enforced disappearances and support the relevant international actors dealing with this issue, including the Working Group of the International Committee of the

Red Cross, and exhorts State commissions on missing persons, as well as Bosniac, Croat and Serb commissions in Bosnia and Herzegovina, to intensify joint work and to cooperate with exhumations;

42. Calls upon the Government of the Republic of Croatia to turn over all relevant material on missing persons, and specifically to transfer relevant documentation on its actions relating to its 1995 "Flash" and "Storm" operations to the International Committee of the Red Cross and the International Commission on Missing Persons;

43. Calls upon the Bosnian Serb authorities to support the reconciliation process by reaching out to family associations from all ethnic groups and to allow burial of remains in the Srebrenica area;

44. Stresses the necessity of close coordination on the issue between relevant international organizations and welcomes the commitments made by the Office of the High Representative to give priority to the question of missing persons, in particular by taking active steps to ensure that excavations and exhumations are carried out to the fullest extent possible;

45. Calls upon the international community:

(a) To provide the appropriate financial, personnel and logistical resources to the International Commission on Missing Persons and the Office of the High Representative to support the exhumation and identification process and provide support to family associations in all three countries so that they can resolve the question of missing persons and accomplish their tasks without delay;

(b) To ensure that excavations and exhumations of mortal remains are undertaken in conformity with internationally accepted practice;

VII

Special Rapporteur

46. Expresses its appreciation to the former Special Rapporteur, Ms. Elisabeth Rehn, for the positive impact her work has had on the enjoyment of human rights in the countries of her mandate;

47. Takes note with appreciation of the reports of the special rapporteurs (E/CN.4/1998/9, 12, 13, 14, 15, 63 and 164);

48. Decides to renew the mandate of the Special Rapporteur for one year and welcomes the appointment of a new Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro);

49. Requests the new Special Rapporteur, in addition to the activities mandated in its resolutions 1994/72, 1996/71 and 1997/57:

(a) To work with the High Commissioner for Human Rights on behalf of the United Nations in dealing with the question of missing persons, including by participation in the International Commission on Missing Persons advisory group and other groups involved in missing persons issues, such as those chaired by the Office of the High Representative and the International Committee of the Red Cross, and to include in his report to the Commission information about activities concerning missing persons in the former Yugoslavia;

(b) To pay particular attention to the situation of persons belonging to ethnic minorities and displaced persons, refugees and returnees who fall within his mandate;

(c) To address human rights issues that transcend the borders between the States covered by his mandate and which can be addressed only through concerted action in more than one country;

50. Requests that the Special Rapporteur carry out missions to:

(a) Bosnia and Herzegovina;

(b) The Republic of Croatia, including Eastern Slavonia, Baranja and Western Sirmium;

(c) The Federal Republic of Yugoslavia (Serbia and Montenegro), including to Kosovo, as well as to Sandjak and Vojvodina;

51. Requests the Special Rapporteur to report to the Commission, at its fifty-fifth session, on the work carried out in fulfilment of his mandate and to present interim reports to the General Assembly at its fifty-third session;

52. Requests the Secretary-General to continue to make the Special Rapporteur's reports available to the Security Council and to the Organization for Security and Cooperation in Europe;

53. Urges the Secretary-General, within existing resources, to make all necessary resources available for the Special Rapporteur to carry out his mandate successfully and, in particular, to provide him with adequate staff based in those territories to ensure effective continuous monitoring of the human rights situation in the countries of the mandate and coordination with other international organizations involved.